

**Montgomery County Agricultural Advisory Committee  
Meeting Minutes  
November 16, 2021**

**Attendees:** Aliza Silver, Amanda Cather, Debra Tropp, Doug Lechliden, Jane Evans, Lori Larson, Eleanor Leak, Ben Butler, Pete Driscoll, Angie McNally, Patrick Jamison, John Brewer

**Staff:** Jeremy Criss

**Guests:** Greg Wims (Up-County Regional Director), Adam Darkins (resident observer), Jimmy Colihan (farmer in Barnesville)

**Agenda items in BOLD.**

1. **Call the Meeting to Order-Introductions:** 7:09 pm
2. **Approval of the October 19, 2021, AAC meeting minutes.** Approved as corrected. (Evans/Leak)
3. **Introduction October 19, 2021 - Zoning Text Amendment (ZTA) 21-08, Landscape Contractor Use Standards (Ndou)**  
[https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20211019/20211019\\_2A.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20211019/20211019_2A.pdf) *Public Hearing is scheduled for 11/30/21 at 1:30 pm.*  
**The Office of Agriculture was not aware of this ZTA until it was introduced.  
The members of the PHED Committee were not aware of this ZTA until it was introduced.**

The ZTA was introduced by Council President Tom Hucker. It will change landscape contractors in county as conditional use and will allow them to function as limited use in the AR zone and Rural Residential zones. The minimum lot size of 2 acres. This ZTA caught everyone by surprise, and no one was informed that it was going to be introduced. The County has not done a good job of identifying areas and zones where landscape contractors can operate. There is a tremendous need to find locations and zones where landscape contractors can operate legally.

APAB is concerned that the lot size would be only 2 acres, and this may be problematic in the rural residential zones.

There is a difference between those businesses that are mowing and blowing grass etc. verses those that are growing and delivering and installing horticultural products like Pete Driscoll's operation. Pete Driscoll responded and said this is the type of operation he has been doing since 1981. Jeremy's recommendation is to not oppose the ZTA. It would be helpful if the ZTA had a larger lot size, that would allow these businesses in areas for growing horticultural products and provide more flexibility for landscape contractors that are in the business of growing, delivering, and installing horticultural products.

Montgomery County has over 350 horticultural businesses of varying sizes, and many of them cannot find locations to operate.

The landscape contractor policy has been revisited in the past at least twice-2005 and 2011. If the County is going to revisit the landscape contractor policy, we should bring the same stakeholders back together again, including MCA and SCA. Caroline Taylor is also recommending the workgroup be assembled to study this policy together.

The difference between a limited use and a conditional use is that a limited use is allowed in the zone, provided you follow the use standards. Conditional use means you must apply to the hearing examiner and submit a \$2,000 filing fee. Then you have to hire an engineer and lawyer to help you meet the application requirements. The Park and Planning, acting as staff to the hearing examiner, then pulls together a packet and makes recommendations to the hearing examiner. A public hearing and open meetings are then scheduled. Petitioning for conditional use can take 2-3 years depending on how controversial the issues are. At the conclusion of the process, the hearing examiner is supposed to help prepare conditions or a written order for a negotiated business plan based on the community concerns that have been heard.

This ZTA doesn't include provisions for growing horticultural products. It proposes standards for business that want a place to locate that are doing the service of land/lawn maintenance (mowing and blowing).

The ZTA, as written, wouldn't prohibit renting property to a landscape operator.

Do we want to submit just a letter or also testimony? In the letter, Jeremy proposes that the ZTA needs to be amended, not opposed. The 2-acre minimum lot size may be too small for the rural residential zones. As APAB's letter states, a 25-acre minimum is more typical for the AR Zone for uses like a farm brewery or farm distillery. This will be a contentious issue. A number of unresolved issues remain, which highlights the need for a working group to study further.

Jeremy will draft the letter, review it with Doug, and circulate it for AAC members to review.

4. **Introduction of Bills: November 2, 2021- Bill 40-21- Individual Water Supply and Sewage Disposal Systems - Amendments (McCartney-Green)**  
**Lead Sponsor: County Executive at the request of the Council President**  
**[https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20211102/20211102\\_9.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20211102/20211102_9.pdf)** *Public Hearing is scheduled for 11/30/21 at 1:30 pm.*  
**The Office of Agriculture has continued to report on this proposed legislation during your monthly meetings since the June 1, 2021, MCFB meeting.**

On February 16, 2021, at our AAC meeting, Adam Ortiz, the former Director of DEP, Adam Sukup, and Steve Shofar from DEP spoke to us about proposed legislation for requiring pumping septic tanks. They hadn't shown us any text at that point.

Mike Sheffel and Jeremy did research on Howard County's program, which is essentially educational with no penalties, enforcement, or violations. Jeremy had suggested perhaps DEP should adopt a similar approach.

APAB, SCD, the Board of Supervisors, MAP, and MCFB hosted the same group to learn about the proposed legislation.

The bill text, once released, had problematic provisions with enforcement, violations, and penalties. Jeremy reached out to Adam and said that agricultural community would oppose the bill, as written. Adam said he would remove the problematic provisions. Jeremy never saw the amended bill. Adam got a new job with Federal EPA before the bill was introduced, and which still included penalties, enforcement, and violations. This bill will impact all homeowners (19,890) in the County that have a septic system/tank.

Jeremy suggested we oppose the legislation. Jeremy had hoped the penalties, enforcement and violations sections would have been deleted from the bill as recommended by the agricultural groups. All the agricultural groups agree to oppose Bill 40-21.

There was a motion for AAC to send a letter outlining the above and recommendation opposition to the legislation. Motion passes. (Larson/Leak)

5. **Follow up on Bill 5-21-GO & PHED Committee-October 28, 2021-The Bill does not address the Racial Equity and Social Justice Impact Statement requirements. The OAG recommends \$5.0 million be added to the Ag Land Preservation CIP FY23-24 to purchase easements on both large farms and smaller farms (less than 50 acres) that will provide access to land for BIPOC farmers both men and women.**  
[https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2021/20211028/20211028\\_GOPHED1.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2021/20211028/20211028_GOPHED1.pdf)

All bills and appropriations moving forward must be reviewed under the racial equity and social justice-RESJ lenses impact statement. This bill that was sponsored by Andrew Friedson was proposed during the Farm Solar ZTA 20-01. The bill would require the solar companies that enter into lease agreements with landowners in the AR zone to establish and install a solar field, that when they pay their real business property taxes with the MD Department of Assessments and Taxation on an annual basis, all county shares of those taxes would be remitted to the County General fund and programmed for agricultural preservation.

The County Council questioned as to whether this proposed preservation funding should go to BIPOC farmers to provide access to land for farming. The Bill 5-21 failed the RESJ impact statement because most of the landowners in the AR zone are white and the funding mechanism proposed in the bill would mostly go to white people. The OAG proposal was to create access to land for smaller farmers. The OAG remitted the FY23-28 Ag Land Preservation CIP and recommended the first two years of the CIP should be

funded with a total \$5 million. The condition was that OAG would use the \$5 million to purchase easements on both large farms in the queue and smaller farms (less than 50 acres) to provide opportunities to access land to BIPOC farmers-men and women who are growing table crops.

The OAG cannot use existing sources of funds for farms less than 50 acres. The OAG has a long list of large farms that are in the queue for preservation money.

Motion for Jeremy to write a letter and get input from Doug Lechliden and the AAC.  
(Brewer/Evans)

6. **Public Hearing on ZTA 21-07 Density and Height Allocations-MPDUs-Please see the attached letter from the Office of Agriculture.**

Multi mixed use planned developments- MPDUs do not use TDRs or BLTs. They never have and never will. They're designed to create opportunities for affordable housing. Upon looking deep into the ZTA it states that there will be new opportunities in the commercial residential zone where if the owner of a project is willing to agree to a 30-year lease term that's not going to increase over 30 years and therefore create affordable housing, then those projects may proceed forward. What that does is take the limited number of CR zones for using BLTs and TDRs and de-emphasizes their use. The ZTA creates an alternative use for CR zoned properties for affordable housing eliminating the need for BLTs and TDRs. The ZTA creates an incentive for affordable housing at the expense of farmers needing equity to expand their farming operation through sale of TDRs and BLTs. Jeremy remitted a letter from OAG explaining this environment including that OAG supports the need for affordable housing. There was a commitment made to farmers 41 years ago which the county has still not addressed, and this is a new 30-year commitment involving the CR zone that will serve as another example of the County de-emphasizing the use for TDRs and BLTs.

7. **Update on the proposed Acquisition by County Parks of the Broad Run Creek Farm II LLC. The CE is proposing to approve this acquisition although the OAG and the APAB are not completely clear on the terms of the transaction- Treatment of TDRs that will be retained with the property verses the TDRs that will be extinguished?**

Jeremy learned this week that Marc Elrich decided, against MCA and some other groups, that the farm will be terminated out of ag preservation and will be used as a conservation park. A 63-acre portion of the farm will remain in ownership of the current owner and 472 acres will be used for the conservation park. The AAC wrote a letter to the CE recommending against the proposal due to the lack of transparency from Parks about how the deal was being structured.

The AAC letter was ignored, and the CE ordered Jeremy to work with Parks to determine the present value of the easement. Jeremy responded that he could not do this because he

did not have the terms of the contract that would outline the future development potential of the farm including the treatment of retained Transfer of Development Rights-TDRs.

Jeremy participated in a meeting with lawyers from the County and Parks including other administrators to negotiate the present value of the easement. The County used State funds to purchase the AEP easement in 2001 totaling \$1,954,033. The Beverly family sold the farm and therefore the personal covenant for retained children lots went away, but there are still 6 TDRs retained with the property that could be used to construct 6 new dwellings and the present value of the easement would need to reflect these 6 TDRs.

The parties agreed to the terms and conditions that Parks would convey 5 of the 6 retained TDRs to the County Government c/o OAG and only one TDR would be retained to construct a future dwelling. The existing farmhouse would be raised. The Parks would remit a payment to the County Government c/o OAG in the amount of \$953,055 including the 5 TDRs representing the present value of the easement necessary for the County to terminate the AEP easement. The OAG would retire the 5 TDRs and the \$953,055 payment could then be used to purchase an easement on another farm.

8. **Update on the MCDOT staff report for the Gravel Portion of River Road. *Please see the attached correspondence from the OAG and MCDOT staff.***

Linda Lewis has been taking pictures of the construction along River Road illustrating the muddy conditions due to the roadbed being compromised. The MCDOT brought in 20 dump truck loads of Number-6 stone. The MCDOT assured that Number-6 would be sufficient to address the muddy conditions along the road. The OAG suggested Number-2 should be used to choke out the mud since the roadbed was compromised. The MCDOT replaced several drainage covert pipes and regraded the drainage ditches, although the pictures show water ponding on the road itself. The County Executive wants the road surface to remain with gravel.

9. **Update on the progress for Expanded Farm to Food Bank Program-November 30, 2021, deadline for applications. *Please see the attached correspondence from the Manna Food Center. There will be an Information Exchange and Listening Session on November 18, 2021, at 3:00 pm.***

We are going to have a third application period for the expanded farm to food bank program-F2FB. The OAG sent out links to the application to all the table food producers. There could be up to \$10,000 per applicant to be used for infrastructure the farmer needs to expand their operation for wholesale production of food.

Ben Butler received funding last year for a produce washing machine. Linda Lewis and Michael Protas used their funding for similar produce washing machines. Many of the applicants requested funding for deer fence, some for ag wells for irrigation, others for walk in cold storage. There were 22 farmers who received grant funding last year. By the end of the 2021 growing season, another 8 farmers showed interest in the program. The Montgomery County Food Council and the Manna Center were able to find more money

from the Greater Washington Community Foundation to help those producers. There are 30 farming operations growing food for the Manna Food Center for people in need and we are hoping to get total of 40 farmers for the 2022 growing season.

Some of the funding came from Federal Government CARES Act for both the 2020 and 2021 programs. The more recent stimulus bill, and some other funding from County Council appropriation to Department of Health and Human Services for the food security task force is the potential funding sources for the 2022 growing season. Heather Bruskin is on that food security task force, and she is the Director of the Montgomery County Food Council. The Greater Washington Community Foundation which operates in the Maryland metropolitan area to help people in need. Moving forward OAG wants to keep the F2FB program going in a post pandemic environment.

Mike Protas from One Acre farm is planning to have a mini farmer conference that will include the farmers that are participating in the F2FB program. The OAG will also be scheduling a farmer forum to answer questions about this program so it can keep moving forward.

10. **Follow up on Bill 16-21-Environmental Sustainability- Building Energy Use Benchmarking and Performance Standards – T&E Committee on October 28, 2021**

**The DEP recommends the bill should apply to equestrian facilities in the County with buildings 25,000 square feet in size or larger to assess the energy being used for lighting, heating, and air conditioning, etc. The DEP presentation included a summary of other jurisdictions around the country including Washington State that exempts all agricultural buildings.**

**[https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2021/20211028/20211028\\_TE1.pdf](https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2021/20211028/20211028_TE1.pdf)**

No decisions were made on the Bill 16-21 during the first T&E Committee Work Session. The DEP showed a list of equestrian buildings they want the bill to impact. Many of these equestrian facilities have already installed LED lighting and solar panels on the roof and they do not have heating or AC except for in small offices with window units. It is unclear what the intent is with this bill. The DEP did an analysis of 4 other jurisdictions and Washington State clearly exempts all ag buildings.

The AAC will send another letter to County Council about replicating the ag buildings that are exempted in Washington State and the council follow the lead of the State of Washington. All existing and new ag buildings should be exempt. The County does not need to be putting additional regulations on ag businesses.

Motion to prepare a letter and recommend that Lori work with Jeremy on the letter. (Evans/Butler) motion passes.

Lori owns one of the 11 properties on the DEP list of equestrian facilities that would be impacted. It doesn't make sense for wide open spaces with a roof, like equestrian facilities, that may as well have open sides, should be subject to these requirements.

11. **Electric Lawn Care** – We are still waiting for legislation from DEP that proposes the prohibition on the use and sale of gasoline leaf blowers. A broader Electric Lawn Care bill may also be proposed.

The DEP has delayed the sale and use prohibition on the smaller mower decks in favor of banning the use and sale of gasoline leaf blowers. The OAG will let everyone know when the proposed legislation is introduced.

### **Additional Items**

12. Greg Wims gave an update.
  - a. Told us that we could use a lobby/reception area and pull up chairs for 12 people. And up on the third floor, there is a lounge with 20 chairs that we could use for our meetings.
  - b. The CE did put in his budget money for a community center in Poolesville.
  - c. Whites ferry – there was a huge hearing in Loudon County VA. Andrew Friedson, Marc Elrich, and others testified that they support it.
13. Next meeting on Dec 21 will be canceled. The AAC is supposed to meet 10 times year and we have met 11 times in 2021.

### **Adjournment**

(Cather/Driscoll) 8:46 PM